



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

September 24, 2003

Ref: 8ENF
DeAnn Christiansen
Executive Director
Tooele County Housing Authority
118 E. Vine Street
Tooele, UT 84074

Re: Tooele Valley Railroad Grade Site; Access for Sampling of Residential Soils

Dear Ms. Christiansen,

As discussed recently by telephone with Mr. Gary Buehler, the US Environmental Protection Agency, Region 8 (EPA), is issuing to the Tooele County Housing Authority (TCHA) an Administrative Order Directing Compliance with Request for Access to Conduct Sampling and Removal Response Activities (Order), effective ten (10) days from the date of receipt by TCHA. The Order requires access be granted for conducting investigations and sampling to assess contamination and determine an appropriate response, if any, at the residential properties owned by TCHA along the former Tooele Valley Railroad Grade right-of-way. The list of addresses in the Order indicates the properties for which access is required. Key documents from the Administrative Record in this matter are attached to the Order.

EPA understands that TCHA has already signed the access agreement presented by ARCO's contractor, Anderson Engineering, for these activities. TCHA has agreed to not revoke that agreement on receipt of the enclosed Order from EPA. This will allow the sampling to go forward for the entire Railroad Grade Site, from Tooele to the International Smelter & Refining Superfund Site, in accordance with a comprehensive sampling plan. If you have any questions or concerns regarding this matter, please call me at (303) 312-6912.

Sincerely,

SIGNED
James Stearns
Staff Attorney

Enclosure

cc: Shun-Ping Chau, 8EPR-ER
Richard O. Curley, Counsel for ARCO, Holland & Hart, Denver

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:

Tooele Valley Railroad Grade Site,
Tooele, Utah

Tooele County Housing Authority,
Respondent.

ADMINISTRATIVE ORDER DIRECTING
COMPLIANCE WITH REQUEST FOR
ACCESS TO CONDUCT SAMPLING
AND REMOVAL RESPONSE
ACTIVITIES

U.S. EPA Region 8

Docket No. **CERCLA-08-2003-0015**

Proceeding Under Section 104(e) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9604(e)

I. ADMINISTRATIVE ORDER FOR ACCESS

This Administrative Order for Access (“Order”) is issued to the Tooele County Housing Authority (“Respondent” or “TCHA”) by the United States Environmental Protection Agency (“EPA”) pursuant to the authority vested in the President of the United States by section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.

§ 9604(e), as amended (“CERCLA”), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and delegated to the Regional Administrator, and further delegated to the undersigned officials.

II. FINDINGS OF FACT

Based upon information currently available, EPA makes the following findings of fact.

1. The Tooele Valley Railroad Grade site (“Site”) is located in the City of Tooele, Utah (Tooele), along a former railroad right-of-way, approximately 100 feet wide, starting from the International Smelter & Refining Superfund Site approximately four miles east of Tooele and running west approximately 3400 feet through the city, entering the city east of Oquirrh Hills

School, crossing 7th, 6th, 5th and 4th Streets and Broadway Avenue. On the west side of Broadway Avenue the Site runs through the Railroad Museum property and then under East Vine Street. Respondent owns the portion of the Site between 4th Street and 7th Street, in the Tooele, Utah, where homes have been constructed (“Residential Properties”), specifically described as the following addresses:

55 North 7th Street
69 North 7th Street
52 North 6th Street
74 North 6th Street
51 North 6th Street
63 North 6th Street
42 North 5th Street
46 North 5th Street
43 North 5th Street
51 North 5th Street
57 North 5th Street
34 North 4th Street
46 North 4th Street.

2. International Smelting & Refining Company (“IS&R”) began operating a copper smelter (“Tooele Smelter”) on the western slope of the Oquirrh Mountains approximately three miles east of Tooele, Utah, in the early 1900's. For the next sixty years the Tooele Smelter was used by IS&R and a succession of owners and operators for processing lead, copper, and zinc ores.

3. In 1909, a railroad route was constructed to connect the San Pedro, Los Angeles, and Salt Lake Railroad main line to the Tooele Smelter. The Tooele Valley Railroad ran from Warner, Utah, three miles west of Tooele, to the Tooele Smelter, four miles east of town. The Railroad connection allowed ore to be shipped to the Tooele Smelter from mines throughout the West and for shipments of ore from the Tooele Smelter to other processing facilities.

4. The operations at the Tooele Valley Railroad resulted in the deposition of hazardous substances containing heavy metals, including lead and arsenic, along the length of the railroad right-of-way, in levels that may threaten human health and the environment.

5. a. In January 2000, the State of Utah Department of Environmental Quality performed sampling at the Residential Properties. The State requested that EPA continue the investigation and perform additional sampling. In April 2000, during the construction of 13 residences at the Residential Properties area, EPA took 24 XRF screening samples and 5 soil samples from approximately one block west of the Railroad Museum to approximately 500 feet east of 7th Street, in Tooele. The highest level of lead detected by XRF screening is approximately 3762 ppm, and the highest level of lead detected by soil sampling is approximately 5460 ppm. In

August 2000, in order to verify or confirm the prior results, EPA re-sampled at five soil sample locations from the April 2000 investigation. One of these samples showed a significantly lowered lead level - 49 ppm instead of the initial value of 1080 ppm, however the results from the other four samples were 1100 ppm, 120 ppm, 1800 ppm and 54 ppm.

b. EPA has concluded that it is necessary to re-sample the Residential Properties for the following reasons: i.) In 2003, Atlantic Richfield Company (ARCO), under EPA oversight, performed extensive sampling at portions of the Site, including areas immediately to the east of the Residential Properties. Samples showed elevated levels of lead of up to 7000 ppm. ii.) EPA has reviewed the 2000 sampling data and believes that, in light of the more recent, comprehensive sampling data immediately to the east of the TCHA properties, the 2000 sampling conducted at the Residential Properties is not sufficient to accurately or completely determine the nature and extent of contamination in that area. iii.) According to the Respondent, fill was brought in during construction of the residences. The amount and source of such fill, where and how thickly it was applied, or its ability to provide an effective barrier preventing contact with residents can not be confirmed. iv.) EPA has received recent inquiries from local residents as to the “cleanliness” of the soil. EPA desires to provide a definitive response to these inquiries. v.) EPA intends that sampling will proceed according to a detailed “removal assessment” that focuses on gardens, children’s play areas (where they exist) and lawn areas. Spacing of the sample grid will be sufficiently comprehensive to fully characterize the Site as to the nature and extent of the contamination. vi.) EPA intends to enter into an administrative order on consent with ARCO for performance of the remainder of the sampling at the Site, including for the Residential Properties. Sampling of the Residential Properties is part of this comprehensive effort to systematically sample the entire Site. EPA intends that the order will also require ARCO to draft and submit a removal assessment report, for EPA review and approval, that will provide an assessment of the data and clean-up options, if such is warranted. EPA’s determination as to appropriate clean-up work, if any, to address contamination will be made after review of all the data from the entire Site and in light of recommendations in the removal assessment report. vii.) EPA intends that sampling will be performed in a manner that is as unobtrusive as possible, but that is also comprehensive and systematic. A comprehensive sampling plan, dividing each residence into zones based on land usage (vegetable garden, play area, lawn area, etc.) is being implemented at Pine Canyon, a residential area nearby. Since Pine Canyon and Tooele Valley Railroad Grade share the same type of contaminants, EPA believes it is essential to implement a sampling plan at the Residential Properties that will treat both communities similarly and to obtain sufficient data to conclusively assess the “cleanliness” of the area, given present land use, and implement any necessary clean-up.

c. Lead is a hazardous substance that poses a threat to human health and the environment. People can inhale or ingest lead by touching lead contaminated soils and breathing contaminated dust particles. Such exposure could present an adverse risk to children and, to a lesser extent, to adults.

6. On or about July 11, 2003, EPA wrote to the Respondent requesting access to take additional samples on the Residential Properties. EPA also contacted representatives of the Respondent by telephone on several occasions to discuss this request. TCHA responded that it would consent to access only if EPA issued an order requiring it to do so.

III. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal assessment, EPA has made the following Conclusions of Law:

7. The Tooele Valley Railroad Grade Site including the Residential Properties is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8. The Tooele County Housing Authority is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

9. The Tooele County Housing Authority is an "owner" as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20).

10. Lead is a "hazardous substance" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

11. EPA has a reasonable basis to believe that there may be a release or threat of a release of a hazardous substance, pollutant, or contaminant from the Residential Properties pursuant to section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

12. EPA needs access to the Residential Properties for the purpose of determining the need for a response action pursuant to section 104(e)(1) of CERCLA, 42 U.S.C. § 9604(e)(1).

13. The Residential Properties constitute a vessel, facility, establishment or other place or property where hazardous substances, pollutants or contaminants may be or have been generated, stored, treated, disposed of, or transported from pursuant to section 104(e)(3)(A) of CERCLA, 42 U.S.C. § 9604(e)(3)(A).

14. The Residential Properties constitute a vessel, facility, establishment or other place or property where hazardous substances, pollutants or contaminants have been or may be released or threatened pursuant to sections 104(e)(3)(B) and (C) of CERCLA, 42 U.S.C. §§ 9604(e)(3)(B) and (C).

15. The Residential Properties constitute a vessel, facility, establishment, or other place or property where entry is needed to determine the need for a response or the appropriate response,

or to effectuate a response action pursuant to section 104(e)(3)(D) of CERCLA, 42 U.S.C. § 9604(e)(3)(D).

16. The Respondent has advised EPA that it will grant access to the Residential Properties only on the condition that EPA issue it an order requiring it to do so.

IV. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, and pursuant to the authority of section 104(e) of CERCLA, 42 U.S.C. § 9604(e), the Tooele County Housing Authority is hereby ordered as follows:

17. The Respondent shall provide EPA and its representatives full and unrestricted access to the Residential Properties in a manner consistent with CERCLA Section 104(e), 42 U.S.C. § 9604(e).

18. The Respondent shall allow access to EPA, its authorized officers, employees, or representatives including the Utah Department of Environmental Quality, its authorized officers, employees, and representatives, at all reasonable times as required by Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), for a period of six months for the purpose of conducting investigations and taking samples to assess contamination and determine an appropriate remediation response at the Residential Properties.

19. The Respondent shall not interfere with EPA's exercise of its access authorities pursuant to 42 U.S.C. § 9604(e)(3) and 40 C.F.R. § 300.400(d), and shall not interfere with or otherwise limit any activity conducted at the Site pursuant to this Order by EPA, its officers, employees, agents, contractors, or other representatives. Any such interference shall be deemed a violation of this Order.

20. In the event of any conveyance by Respondent, or Respondent's agents, successors and assigns, of an interest in any property which includes an access area, Respondent and Respondent's agents, successors and assigns shall convey the interest so as to insure continued access by EPA and or its representatives for the purpose of carrying out the activities pursuant to this Order. Any such conveyance shall restrict the use of such property so that the use will not interfere with the activities undertaken pursuant to this Order. Respondent, or Respondent's agents, successors and assigns shall notify EPA in writing at least thirty (30) days before any conveyance of an interest in property where an access area is located, and shall notify the other parties involved in the conveyance prior to the transfer of the provisions of this Order.

V. PARTIES BOUND

21. This Order shall be binding upon Respondent and its agents, employees, successors and assigns.

VI. AVAILABILITY OF ADMINISTRATIVE RECORD

22. The Administrative Record supporting the above findings, conclusions, and determinations, is available for review between the hours of 8 a.m. and 5 p.m. in the EPA Region 8 offices at 999 18th Street, Denver, Colorado. Key documents from this Administrative Record are also attached to this Order.

VII. NOTICE OF INTENT TO COMPLY

23. On or before the Effective Date of this Order, Respondent shall notify EPA in writing whether the Respondent will comply with the terms of this Order. Respondent's failure to notify EPA of its intent to fully comply with this Order by the time indicated above shall be construed as a denial of EPA's request to enter and shall constitute a violation of this Order by Respondent.

Such written notice shall be sent to:

James Stearns, Enforcement Attorney, 8ENF-L
US EPA Region 8
999-18th Street, Suite 300
Denver, Colorado 80202

VIII. OPPORTUNITY TO CONFER

24. Within three (3) days after the receipt of this Order, Respondent may request a conference with EPA to be held no later than two (2) days before the Effective Date of this Order on any matter pertinent to this Order, including its applicability, the factual findings and the determinations upon which it is based, the appropriateness of any actions the Respondent is ordered to take, or any other relevant and material issues or contentions which it may have regarding this Order. This conference is not an adversarial proceeding and is not part of any proceeding to enforce or challenge this Order. The Respondent may appear in person or by an attorney or other representative at the conference. The Respondent may also submit written comments or statements of position on any matter pertinent to this Order no later than the time of the conference, or two (2) days before the Effective Date of the Order if the Respondent does not request a conference. EPA will deem the Respondent to have waived its opportunity to the conference and its opportunity to submit written comments, if it fails to request the conference or submit comments within the specified time. Any request for a conference or written comments or statements should be submitted to James Stearns, Enforcement Attorney, at (303) 312-6912.

IX. EFFECTIVE DATE

25. This Order shall be effective ten (10) days from the date it is received by Respondent.

X. PENALTIES FOR NONCOMPLIANCE

26. Compliance with this order shall be enforceable pursuant to Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5). Failure to comply may also permit a court to subject the Respondent to civil penalties of up to \$27,500 for each day of each violation, as provided in Sections 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Nothing herein shall preclude EPA from taking such other actions as may be necessary to protect the public health or welfare or the environment and recovering the costs thereof.

XI. OTHER CLAIMS

27. Nothing in this Order is intended to release any claims, causes of action, or demands in law or equity, of any party against any entity for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

XII. TERMINATION AND MODIFICATION

28. This Order shall terminate six months from the Effective Date. This Order may be amended or modified only by EPA in writing.

IT IS SO ORDERED:

BY: **SIGNED** _____ DATE: **09-18-03** _____
Sharon Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency, Region 8

BY: **SIGNED** _____ DATE: **9/18/03** _____

Michael T. Risner, Director
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice
United States Environmental Protection Agency, Region 8

BY: **SIGNED** _____ DATE: **09/23/03** _____

Max H. Dodson
Assistant Regional Administrator
Office of Ecosystem Protection and Remediation
United States Environmental Protection Agency, Region 8

**In the Matter of: Tooele County Housing Authority
Tooele Valley Railroad Grade Site
Docket No. CERCLA-08-2003-0015**

The undersigned hereby certifies that the original and one copy of the attached ADMINISTRATIVE ORDER DIRECTING COMPLIANCE WITH REQUEST FOR ACCESS TO CONDUCT SAMPLING AND REMOVAL RESPONSE ACTIVITIES was hand-carried to the Regional Hearing Clerk, EPA Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail, return receipt requested, to:

DeAnn Christiansen
Executive Director
Tooele County Housing Authority
118 E. Vine Street
Tooele, UT 84074

9/24/03
Date

SIGNED
Judith M. McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 24, 2003.